

FILED

OCTOBER 7, 1987

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

EFFECTIVE

OCTOBER 21, 1987

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

BENJAMIN CALA, D.C.
LICENSE #1842

TO PRACTICE CHIROPRACTIC IN THE
STATE OF NEW JERSEY

:
:
: Administrative Action
:
: FINAL ORDER

This matter was brought before the New Jersey State Board of Medical Examiners by way of complaint filed November 3, 1986, by the Attorney General of New Jersey, Joan D. Gelber, Deputy Attorney General appearing. The complaint alleged that Dr. Cala had been convicted following a plea of guilty to acting in concert with others and obtaining by fraudulent means a diploma purporting to authorize the practice of a profession, to wit a degree of doctor of medicine in violation of New York State Law (Title 8, Article 130, Subarticle 4, Section 6512, (1) of the Educational Law of the State of New York). The conviction was said to constitute conviction of a crime of moral turpitude or a crime relating adversely to the practice of a profession and said conduct was said to demonstrate a failure of the continuing requirement of good moral character. Dr. Cala was charged in Count II of the complaint with having obtained and notarized as accurate a transcript of the Universidad del Noreste although he never attended the University and knew that the transcript was a forgery. He was further charged with having obtained and notarized as accurate a transcript of the Universidad Nueva Leon having never attended the University and knowing that the transcript

was a forgery. Respondent was also charged with having obtained a letter purporting to show completion of clinical rotations by himself at the Terrace Heights Hospital in Hollis, New York which were never completed and which letter was alleged to be a forgery known to Dr. Cala. Finally Count II alleged that Dr. Cala submitted a false application to the ECFMG (Educational Commission for Foreign Medical Graduates) in which it was represented that Dr. Cala had attended CETEC Medical School in the Dominican Republic between January 1978 and December 1981 when in fact he had never attended CETEC. The conduct in Count II was said to constitute misrepresentation and deception and the failure of the requirement of good moral character imposed on every Medical Board licensee in violation of N.J.S.A. 45:1-21(b) and on a licensed chiropractor by N.J.S.A. 45:9-41.5.

Defendant filed an answer on November 10, 1986 in which he admitted in part and denied in part the allegations of the complaint.

A hearing in this matter was conducted by the Board on August 12, 1987 and continued on September 9, 1987. At the hearing conducted on August 12, respondent, represented by Alex Booth, Esq., made two preliminary motions prior to presentation of the State's case. First he moved for dismissal of all charges that related to conviction of a crime as he contended that since Dr. Cala received a conditional discharge at the end of twelve (12) months following his conviction, no record of a criminal conviction existed in the State of New York. Respondent's second motion was to refer the entire matter to the Office of Administrative Law if the Board intended to proceed based on the underlying acts outside of the conviction.

After hearing argument on the matter by both counsel, the Board determined to reserve the question of the effect of the conditional discharge on the use of the instant conviction and required both parties to file briefs on the issue prior to the next Board meeting. The Board also denied Mr. Booth's motion to refer the matter regarding the underlying acts to the Office of Administrative Law and took testimony regarding the remainder of the complaint.

Marked for identification purposes only at the hearing considering the reservation by the Board of the question of the effect of the conditional discharge on the use of a criminal conviction, were the following documents:

- P-1 Indictment number 1203/86 - The People of the State of New York against Benjamin Cala.
- P-5 Miscellaneous Certificate No. 19053 filed February 26, 1986 regarding People of the State of New York against Benjamin Cala.
- P-6. Transcript of plea and sentence regarding People against Benjamin Cala.

Marked into evidence by the Deputy Attorney General at the hearing were the following:

- P-2 Photocopy of transcript of Universidad del Noreste for B. Cala.
- P-3 Photocopy of transcript of Universidad Nueva Leon for Benjamin Cala.
- P-4A Photocopy of letter to CETEC on stationery of Terrace Heights Hospital signed by S. Mintz, Executive Director.
- P-4B Photocopy of affidavit of Steven W. Mintz, dated 10/30/84.
- P-7 Photocopy of Letter to Investigator Raymond J. Sheerin from ECFMG, dated 9/19/84.
- P-7A Photocopy of ECFMG application for examination by Benjamin Cala, filed 10/29/81.
- P-7B Photocopy of ECFMG application for examination by Benjamin Cala, filed 5/5/82.
- P-8 Original letter from Postal Inspector D. Sussan to Inv. R. Sheerin, dated 7/24/87.

P-9 Photocopy of letter from B. Cala to Pedro de Mesones

P-10 Photocopy of CETEC diploma of Benjamin Cala

The state presented the testimony of Investigator Raymond Sheerin of the State Education Department, Office of Professional Discipline in New York. He testified inter alia that he interviewed Dr. Cala on April 24, 1985 at his office in Jersey City. He testified that Dr. Cala told him he met with Pedro de Mesones four times at the Waldorf Astoria Hotel, that he paid de Mesones \$4,000 and received documents including the del Noreste transcript, Nueva Leon transcript and the Terrace Heights clerkship letter, all of which he was to have notarized and returned to de Mesones. He also testified that Cala told him he returned the documents to de Mesones and had them notarized and signed. Cala also told him that at a fourth meeting with de Mesones he was to pick up the diploma for which he was quoted a price of \$10,000 but that he had only paid \$4,000 and still owed de Mesones money. Investigator Sheerin testified that he received a phone call following the interview from Dr. Cala indicating that he may have been wrong about the number of meetings with de Mesones, that there were only three instead of four and that during the second meeting he may have given the \$4,000 to de Mesones at which time he may have given de Mesones all the documents that were signed and notarized by himself. Finally, the Investigator testified that he showed each of the documents to Dr. Cala which he identified and indicated that he had signed or notarized each of the documents with the exception of the clerkship letter which was never notarized or signed.

Upon cross-examination Investigator Sheerin admitted that Dr. Cala had indicated he had sent back the CETEC diploma to Pedro de Mesones telling Mr. Sheerin that it was worthless so he sent it back. He also indicated that the investigation of CETEC began approximately two years after Dr. Cala sent back his diploma to Pedro de Mesones and that Dr. Cala asked the investigator whether he might be able to get back the money he had paid to de Mesones. Investigator Sheerin admitted that P-3, a copy of the Nueva Leon transcript that was identified for the record did not appear to have Dr. Cala's signature on it although Investigator Sheerin had testified that he saw Dr. Cala's signature on it somewhere and that Dr. Cala had said that he had it signed and notarized. He explained that he felt the document identified for the record was a xerox copy that did not show the signature.

On behalf of Dr. Cala the following documents were entered into evidence:

- R-1 Photocopy of conditions attached to certificate of conditional discharge issued to B. Cala.
- R-2 Check drawn to S. Langerquist - \$3,000 dated 11/9/81.
- R-3 Check drawn to Universidad Del Bravo in the amount of \$50 dated 7/11/81
- R-4 Check drawn to S. Langerquist in amount of \$1,000 dated 7/23/81
- R-5 Check drawn to Universidad CETEC in amount of \$100 dated 7/23/81

Dr. Cala also presented his case. He claimed that he was the victim of Pedro de Mesones who was a con man, that he believed that CETEC was a legitimate school, that de Mesones was a legitimate representative of CETEC acting as a recruiter and that he was starting on a legitimate program to obtain a medical diploma. However, when he was handed a diploma in a tube

he knew the entire scheme was a sham and he returned the diploma. Dr. Cala testified explaining that each of the checks submitted as exhibits (R-2, R-3, R-4, R-5) represented a finder's fee, tuition, and other monies to process his application to CETEC. He claimed that he met Pedro de Mesones at the Waldorf Astoria in a hotel room, that on at least one occasion de Mesones was in a robe and that a woman ran to the bathroom when Dr. Cala came to the door. However, Dr. Cala was admitted to the room by de Mesones who took his checks. He further testified that he signed the checks in blank on the bottom and allowed de Mesones to fill in the amount and that he similarly signed in blank many other documents presented to him by de Mesones. He then identified his signature on the transcript from Universidad del Noreste but indicated he had nothing to do with getting the notary and that he did not recall signing any document that appeared to be a transcript. He stated that during their third meeting, de Mesones gave him a cylindrical tube in the lobby of the hotel, but that Cala did not look at it for two weeks, and when he realized it was a diploma he knew that this was a scam and he mailed the diploma back. He explained a letter marked P-8 for identification that he sent back with the diploma indicating that he was sending it back because he could not pay the entire fee demanded by de Mesones as being meant to reassure de Mesones that he had something on Cala and Cala would not do anything to him. Cala claimed he was afraid of de Mesones who he was told had threatened his partner's family. He also intended the letter to show de Mesones he wanted no part of the diploma. He claimed the ECFMG applications (P-7A and P-7B in evidence) were signed by him but that de Mesones had

filled in the information on P-7A regarding the medical school he had attended and the date of his diploma, unbeknownst to Dr. Cala. That information was not filled in on the second application which was also identified as signed by Dr. Cala. He explained that he took the ECFMG examination on two occasions although he had not attended any classes at any medical school because he believed that just as in chiropractic school you could take examinations prior to the end of school and because he believed his chiropractic credentials would give him two years of credit toward medical school stating that chiropractic education is the same as medical education. He therefore explained his taking of the second ECFMG examination after the time he returned the CETEC diploma to de Mesones.

He further testified that he does not remember Investigator Sheerin showing him any documents whatsoever and that at the time of Investigator Sheerin's visit he was led to believe he was investigating Pedro de Mesones not Dr. Cala.

At the hearing on September 9, 1987, the Board again considered the issue of whether respondent's sentence of conditional discharge precluded consideration of his conviction of a crime. The State had filed a brief on this issue and there was some discussion regarding whether respondent had received a copy of that brief prior to the date of hearing. In any event, the Board finds that on the face of the New York Penal Law, Sections 65.05 and 65.10 indicate that a conditional discharge is simply a type of sentence and nothing has been presented to this Board indicating that a conditional discharge expunges the record or in any way precludes this Board from considering

respondent's conviction of a crime.*

The Board therefore denied respondent's motion to preclude consideration of the New York conviction. The Board thereafter accepted into evidence the documents relating to the conviction previously marked only for identification, that is, P-1 (indictment 1203/86); P-5 (miscellaneous certificate re: conviction 1203/86) and P-6 (transcript of plea and sentence 1203/86). The Board also accepted into evidence P-7A and P-7B, Dr. Cala's original applications to ECFMG, as substitutes for the previously admitted copies, and new exhibits as follows:

- P-11 Affidavit of Ronda Lustman, Assistant Attorney General
- P-12 Report of the score of Benjamin Cala, D.C., on the 1/30/82 ECFMG
- P-13 Report of the score of Benjamin Cala, D.C., on the 7/21/82 ECFMG examination

At the conclusion of closing arguments by counsel the Board deliberated in Executive Session and determined as follows:

DISCUSSION

The Board believes its decision in this matter is well supported based upon Dr. Cala's conviction alone. We note the admission by Dr. Cala contained on page 4 of the plea transcript (P-6 in evidence):

THE COURT: It is charged that you acting in concert with others in the County of New York and elsewhere on or about and between June 19, 1981

*We note that there was some discussion regarding whether respondent had pleaded guilty to a Class E felony or a Class A misdemeanor as indicated in the plea transcript under New York law. The Board notes that in any event a Class A misdemeanor is punishable by incarceration of up to one year under New York law. (See P-6 for identification, pages 3-4) and that any crime punishable by imprisonment in excess of six months is defined as a crime for New Jersey purposes (See N.J.S.A. 2C:1-4).

and December, 1981, being a person not authorized to practice medicine did file, furnish, obtain and attempt to file, furnish and obtain by fraudulent means a diploma purporting to authorize the practice of a profession, to wit, a diploma from a technical university awarding the degree of Doctor of Medicine. Do you understand that charge?

MR. CALA: YES.

THE COURT: Is it true?

MR. CALA: YES.

THE COURT: How do you plead to the charge?

MR. CALA: Guilty.

That admission standing alone evidences Dr. Cala's participation in a crime involving fraud and attempting to obtain false medical credentials, which certainly relates adversely to the practice of his profession, that is, chiropractic. However, the Board also finds that as to the balance of the allegations regarding Dr. Cala's obtaining of fraudulent medical credentials, his testimony to the Board was not credible. He would have us believe that he thought all along he was legitimately enrolling in medical school. Yet he met with de Mesones in a hotel room in New York City after seeing a newspaper ad and paid him a finder's fee of \$1,000. De Mesones answered the hotel room door on at least one occasion in a bathrobe and allowed Cala to enter and leave checks and sign papers despite the fact that a woman ran past Cala into the ladies room and Cala believed he had just caught "somebody in the process of making love." Cala signed numerous documents in blank including the checks, allowing De Mesones to fill them in later, and Cala has identified his signature on P-2, a transcript Cala received a cylindrical tube with documents in it (the fraudulent CETEC diploma)

during his last meeting with De Mesones and was told to look at it but claims he did not look at it for two weeks. Cala returned the diploma with a letter that said he couldn't pay additional money he owed for it. Cala signed one ECFMG application and claims he did not know that de Mesones filled in the false information regarding the Medical School he graduated from yet he signed and submitted a second ECFMG application that clearly states it is necessary for all new applicants to fill in the information regarding dates of attendance at medical school and the date the medical degree was conferred. He took the ECFMG twice. He had returned the diploma and admits he knew de Mesones had involved him in a scam, yet he took the examination on the second occasion having never attended medical school and never setting foot in any hospital for a clerkship program.

The Board finds Dr. Cala's contention that he thought all along that he was enrolling in a legitimate medical school program to be incredible and finds it much more credible that at some point, whether at the outset or at a later time, he had to know the scheme was a sham. He did later return the diploma, whether because he could not afford to complete the deal or because he had a change of heart about participating in the sham. These findings are supported by Investigator Sheerin's testimony that Dr. Cala admitted to him during an interview in 1982 that he paid de Mesones \$4,000, received documents from de Mesones during their second meeting including the Noreste transcript, the Nueva Leon transcript and the Terrace Heights clerkship letter and that he had a meeting with de Mesones to pick up the diploma, was quoted a price of \$10,000 and still owed him some money. We do not find the investigator's credibility significantly disturbed by his recollection that the

Nueva Leon transcript was signed and notarized, yet the copy in evidence has no visible signature.

Based upon the evidence before us, and our findings on credibility, the Board makes the following findings:

FINDINGS OF FACT

The Board finds as fact each allegation of the Complaint with the exception of Paragraph 6, Count II which indicates that respondent accepted a transcript from Universidad Nueva Leon which was a forgery and had it notarized. We make this change because there is no visible signature on the copy of the Nueva Leon transcript and respondent has denied having it notarized.

CONCLUSIONS OF LAW

The Board concludes that respondent, having been convicted of an attempt to fraudulently obtain a diploma authorizing the practice of a profession has been convicted of a crime involving fraud which in this state is equivalent to a crime of moral turpitude. In addition, in the circumstances of this case the Board finds that such a crime, involving the fraudulent obtaining of an academic credential to practice medicine adversely relates to the practice of chiropractic, the profession for which Dr. Cala is licensed in this State. Therefore, Dr. Cala is found to have violated N.J.S.A. 45:1-21(f). The Board also finds that his conduct demonstrates a failure of the continuing requirement of good moral character in violation of N.J.S.A. 45:9-41.5.

Respondent's receipt of the forged transcripts, clinical clerkship completion letter and completion of ECFMG applications all evidence a lack of the continuing requirement of good moral character in violation of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:9-41.5.

His submission of false documents to the ECFMG constitutes misrepresentation and deception and a failure of the continuing requirement of good moral character in violation of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:9-41.5.

IT IS therefore on this 23rd day of September, 1987,
ORDERED:

1. That the license of respondent Benjamin Cala, D.C., to practice chiropractic in the State of New Jersey be and hereby is suspended for a period of two years. The first four months of that suspension shall be active and the remainder shall be stayed and become a period of probation. The active period of suspension shall begin 2 weeks after the filing of the within Order.
2. Respondent is assessed a monetary penalty of \$5,000 representing \$2,500 per count for which he was found guilty. He is also assessed costs.
3. Respondent shall perform 300 hours of community service of a non-chiropractic nature prior to the end of his probationary period.
4. Respondent shall comply with all parts of the Board's directive(s) applicable to discipline of licensees attached hereto.

THIS ORDER IS EFFECTIVE TWO WEEKS AFTER FILING WITH THE BOARD OF MEDICAL EXAMINERS.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By:

Frank J. Malta
Frank J. Malta, President

FUTURE ACTIVITIES OF MEDICAL BOARD LICENSEE WHO HAS BEEN DISCIPLINED

- a) A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board:
 - 1) Shall desist and refrain from the practice of the licensed profession in any form either as principal or employee of another.
 - 2) Shall not occupy, share or use office space in which another licensee practices the profession.
 - 3) Shall desist and refrain from furnishing professional services, giving an opinion as to the practice or its application, or any advice with relation thereto; or from holding himself or herself out to the public as being entitled to practice the profession or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice the licensed profession.
 - 4) Shall not use any sign or advertise that such person, either alone or with any other person, has, owns, conducts or maintains a professional office or office of any kind for the practice of the profession or that such person is entitled to practice, and such person shall promptly remove any sign indicating ability to practice the profession.
 - 5) Shall cease to use any stationery whereon such person's name appears as a professional in practice. If the practitioner was formerly authorized to issue written prescriptions of medication or treatment, such prescriptions shall be destroyed if the license was revoked; if the license was suspended, the prescriptions shall be stored in a secure location to prevent theft or any use whatever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed of, transferred, or safeguarded.
 - 6) Shall promptly notify by telephone or mail all patients who have been under such practitioner's care within the preceding six months of his inability to provide further professional services and shall advise said patients to seek health care services elsewhere. When a new professional is selected by a patient, the disciplined practitioner shall promptly deliver the existing medical record to the new professional, or to the patient if no new professional is selected by the patient, without waiving any right to compensation earned for prior services lawfully rendered.
 - 7) Shall not share in any fee for professional services performed by any other professional following this suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf, prior to the effective date of the suspension, revocation or surrender.
 - 8) Shall promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.

b) A practitioner whose license is surrendered, revoked, or actively suspended for one year or more:

1) Shall promptly require the publishers of any professional directory and any other professional list in which such licensee's name appears, to remove any listing indicating that the practitioner is a licensee of the New Jersey State Board of Medical Examiners in good standing.

2) Shall promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

c) With respect to all Board licensees whose practice privileges are affected by sections (a) or (b) above, such practitioner:

1) Shall within 30 days after the effective date of the practitioner's suspension, revocation or surrender of license, file with the Secretary of the Board of Medical Examiners a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person; any change in the residence address or telephone number shall be promptly reported to the Secretary.

FILED

NOVEMBER 10, 1986

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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR :
REVOCATION OF THE LICENSE OF THE :
LICENSE OF :

BENJAMIN CALA, D.C.
LICENSE NO. 1842

ADMINISTRATIVE ACTION

TO PRACTICE CHIROPRACTIC IN THE :
STATE OF NEW JERSEY :

ANSWER

Dr. Benjamin Cala, having his chiropractic practice at 879
Bergen Avenue, Jersey City, NJ 07306, by way of answer to
complaint says:

AS TO COUNT I

1. Defendant admits the allegations of paragraph 1.
2. Defendant admits the allegations of paragraph 2.
3. Defendant admits the allegations of paragraph 3.
4. Defendant admits that he was charged as to paragraph 4.
5. Defendant admits that he was charged as to paragraph 5.
6. Defendant admits that he was charged as to paragraph 6.
7. Defendant admits that he was charged as to paragraph 7.

8. Defendant admits that he was charged as to paragraph 8.
9. Defendant admits he pleaded guilty to the charges stated in paragraph 9 but under mitigating circumstances and his sentence was a conditional discharge.
10. Defendant denies the conviction is a crime of moral turpitude nor warrants disciplinary action.

AS TO COUNT II

1. Defendant denies allegations of paragraph 1.
2. Defendant admits allegations of paragraph 2 but he denies any responsibility for the obtaining the document.
3. Defendant denies allegations of paragraph 3.
4. Defendant denies allegations of paragraph 4.
5. Defendant admits allegations of paragraph 5 but denies any responsibility for the obtaining of the document.
6. Defendant denies allegations of paragraph 6.
7. Defendant denies allegations of paragraph 7.
8. Defendant admits allegations in paragraph 8 but denies responsibility for obtaining the document.
9. Defendant denies allegations in paragraph 9.
10. Defendant admits allegations in paragraph 10 but denies responsibility for any misrepresentation in the application.
11. Defendant admits allegations in paragraph 11 but denies responsibility for the false representation.

12. Defendant admits allegations in paragraph 12 but denies responsibility for any false and fraudulent misrepresentation.

13. Defendant denies allegations in paragraph 13.

WHEREFORE, defendant demands judgment dismissing counts 1 & 2 of this complaint.

BROWNSTEIN, BOOTH, BARRY & DIAZ

BY:


HOWARD BROWNSTEIN

I certify that the within Answer was filed within the time prescribed by the Rules of Court.


HOWARD BROWNSTEIN

DATED: November 5, 1986